

EXHIBIT A

JDC CONSTRUCTION COMPANY

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PROPOSAL

3/14/2010

CITY OF FRISCO
PARKS AND RECREATION
1601 FRISCO SQUARES BLVD
FRISCO, TX 76034

ATT: JOHN BOSCHER
RE: PROPOSAL FOR WORK AT HUMMINGBIRD AND BEAVERS BEND PARKS

DEAR SIR:
WE HEREBY PROPOSE TO FURNISH ALL MATERIAL, EQUIPMENT AND PERFORM ALL LABOR
NECESSARY TO COMPLETE THE FOLLOWING WORK ON THE ABOVE REFERENCED PROJECT:

HUMMINGBIRD PARK

1. REMOVE AND REPLACE APPROX 1200 SF CONC TRAIL
2. PATCH CONCRETE EDGES AND JOINTS
3. PREP AND RESEAL APPROX 1200 LF EXPANSION JOINT
4. REGRADE AND RESOD APPROX 10750 SF BERMUDA SOG
5. REGRADE AND HYDROMULCH APPROX 5000 SF BERMUDA HYDROMULCH
6. ADJUST VALVE BOXES AND STRAIGHTEN TREES

FOR THE SUM OF: \$56,187.00

BEAVERS BEND PARK

1. REMOVE AND REPLACE APPROX 1800 SF CONC TRAIL
2. PATCH CONC EDGES AND JOINTS
3. PREP AND RESEAL APPROX 3000 LF EXPANSION JOINT
4. REGRADE AND RESOD APPROX 3414 SF BERMUDA SOG
5. REGRADE AND RESOD APPROX 18350 SF BUFFALO SOG
6. OVERSEED BUFFALO SOG APPROX 23,000 SF
7. PREP AND REPAINT APPROX 470 LF IRON FENCE
8. ADJUST VALVE BOXES AND REPLANT 1 TREES

FOR THE SUM OF: \$60,195.00

TOTAL BOTH PARKS \$116,382.00

EXHIBIT B

EXHIBIT C

SECTION 02310 - TOPSOILING AND FINISH GRADING

PART I - GENERAL

1.1 SECTION INCLUDES

- A. Furnish all labor, materials, tools, equipment, and services for all topsoiling and finished grading, as indicated, in accord with provisions of Contract Documents.
- B. Completely coordinate with work of all other trades.
- C. Although such work is not specifically indicated, furnish and install all supplementary or miscellaneous items, appurtenances and devices incidental to or necessary for a sound, secure and complete installation.

1.2 LOCATION OF WORK

- A. All areas within limits of construction, areas of surplus material disposal, and all areas which are disturbed in the course of the work.

1.3 RELATED SECTIONS

- A. Section 02100 - Site preparation
- B. Section 02300 - Earthwork and site grading
- C. Section 02900 - Landscaping
- D. Section 02930 - Lawns & grass

1.4 QUALITY ASSURANCE

- A. Finish Grading Tolerance:
 - 1. 0.1-ft. (30mm) plus/minus from required elevations.

1.5 JOB CONDITIONS:

- A. Verify amount of topsoil stockpiled, and determine amount of additional topsoil, if necessary to complete work.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Topsoil:
 - 1. Original fertile, friable surface soil typical of the area, capable of supporting native plant growth, reasonably free of subsoil, clay, weeds, roots, and stones larger than 1 in.
 - a. Use existing topsoil stockpiled under Section 02100.

- b. If amount of topsoil stockpiled is less than amount necessary for the work, furnish all additional topsoil required at no additional cost to the Owner.
- c. Contractor may import topsoil to the site with prior review and approval by the Architect.

B. Surplus Material:

- 1. Remove from site and legally dispose of material.

PART 3 - EXECUTION

3.1 ROUGH GRADE REVIEW

- A. Rough grading reviewed by Architect in Section 02300, Earthwork and Site Grading.

3.2 PREPARATION

- A. Correct, adjust and/or repair rough graded areas.

- 1. Cut off mounds and ridges.
- 2. Fill gullies and depressions.
- 3. Perform other necessary repairs.
- 4. Bring all sub-grades to specified contours, even and properly compacted.

- B. Remove all stones and debris over 1 in. (25mm) in any dimension from open areas.

3.3 PLACING TOPSOIL

- A. Do not place topsoil when subgrade is either wet or frozen enough to cause clodding.
- B. Spread topsoil 6 inch compacted depth over all landscape areas. Leave planting bed areas 6" low to receive bed preparation material. Refer to Section 02900 – Planting.
- C. Make finished surface of open areas free of stones, sticks, dirt clods or other material 1-in. (25mm) or more in any dimension. Athletic fields shall be free of stones, sticks, or other material 1/2" or more in any dimension. Athletic fields shall be reasonably free of stones and organic material to the Owner's satisfaction.
- D. Drag finish with harrow (or hand rake) to insure smooth finish to the lines and grades indicated.
- E. Restore areas occupied by stockpiles to condition of rest of finished work.

3.4 ACCEPTANCE

- A. Upon completion of topsoiling, obtain Architect's acceptance of grade and surface.

END OF SECTION

SECTION 02900 - PLANTING

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Complete planting shown on drawings and described herein.

B. Related Sections:

1. Section 01770 - Contract closeout
2. Section 02310 - Topsoiling and finish grading
3. Section 02810 - Irrigation system
4. Section 02930 - Lawns and grass

1.2 QUALITY ASSURANCE

- A. Comply with applicable federal, state and county regulations governing landscape materials and work.
- B. Architect reserves right to review materials at growing site.
- C. Observation at growing site does not preclude right of rejection at job site. Plants damaged in transit or at job site shall be rejected.
- D. Personnel: Employ only qualified personnel familiar with required work.

1.3 REFERENCED STANDARDS

- A. American Standard for Nursery Stock, Edition approved October 27, 1980 by American National Standards Institute, Inc. (Z60.1), except as modified herein-Plant Materials.
- B. Hortus Third, 1976 - Cornell University - Plant Nomenclature.

1.4 SUBMITTALS

- A. Samples: Provide representative quantities of mulch, and bed mix material. Samples shall be approved by Architect before use on project.
- B. Product Data: Submit complete product data and specifications on all other specified materials.
- C. Submit three representative samples of each variety of ornamental trees, shrubs, and groundcover plants for Architect's approval. When approved, tag, install and maintain as representative samples for final installed plant materials.

1.5 PRODUCT DELIVERY, STORAGE AND HANDLING

A. Preparation:

1. Container Grown Plants: Deliver plants in container sufficiently rigid to hold ball shape and protect root mass. Plants/trees with damaged root balls shall be rejected.

B. Delivery:

1. Deliver packaged materials in sealed containers showing weight, analysis and name of manufacturer. Protect materials from deterioration during delivery and while stored at site.
2. Deliver only plant materials that can be planted in one day unless adequate storage and watering facilities are available on job site.
3. Protect plants during delivery to prevent damage to root balls or desiccation of leaves. Keep plants moist at all times. Cover all materials during transport.
4. Notify Architect of delivery schedule 48 hours in advance so plant material may be observed upon arrival at job site.
5. Remove rejected plant material immediately from site.
6. To avoid damage or stress, do not lift, move, adjust to plumb, or otherwise manipulate plants by trunk or stems.

1.6 JOB CONDITIONS

A. Planting Restrictions:

1. Perform actual planting only when weather and soil conditions are suitable in accordance with locally accepted practices.

B. Protection:

1. Do not move equipment over existing or newly placed structures without approval of Architect and General Contractor.
2. Provide board-roading as required to protect paving.
3. Protect other improvements from damage, with protection boards, ramps and protective sheeting.

C. Utilities:

1. Determine locations of underground utilities and perform work in a manner which will avoid possible damage. Hand excavate, if required, to minimize possibility of damage to underground utilities.
2. Coordinate work with irrigation contractor to prevent damage to underground sprinkler system.

D. Condition of Surfaces:

1. Landscape areas will be left as described in Section 02310, Topsoiling and Finished Grading. Complete bed preparation as noted herein.

1.7 WARRANTY

- A. Warranty plants for one year after final acceptance. Replace dead materials and material not in vigorous, thriving condition as soon as weather permits and on notification by Owner. Replace plants, including trees, which in opinion of Architect have partially died thereby damaging shape, size, or symmetry.
- B. Replace plants with same kind and size as originally planted, at no cost to Owner. Provide one-year warranty on replacement plants. Trees may be replaced at start of next planting or digging season. In such case, remove dead trees immediately. Protect irrigation system and other piping, conduit other work during replacement. Repair any damage immediately to the Owner's satisfaction.
- C. Warranty excludes replacement of plants after final acceptance because of injury by storm, drought, drowning, hail, freeze, insects or diseases, theft or vandalism.
- D. At end of warranty period, remove staking and guying materials.

1.8 MAINTENANCE

- A. Water: Will be available on site. Provide necessary hoses and other watering equipment required to complete work.
- B. Maintain plantings by watering, cultivation, weeding, spraying, cleaning and replacement as necessary to keep landscape in a vigorous, healthy condition and rake bed areas as required until final acceptance.
- C. Coordinate watering schedules with irrigation contractor during installation and until final acceptance. Provide deep root watering to newly installed trees.
- D. Monitor sump pits at trees daily and dewater pits if standing water persists.

PART 2 - PRODUCTS

2.1 PLANTS

- A. General: Well-formed No. 1 grade or better nursery grown stock. Listed plant heights are from tops of root balls to nominal tops of plants. Plant spread and height refers to nominal width and height of the plant, not to the outer leaf tips. Plants listed to be in container shall be container grown (not containerized) well rooted and established in their container but not root bound. Plants will be individually approved by the Architect and his decision as to their acceptability shall be final.

- B. Shrubs and Groundcovers: Nursery grown, healthy, vigorous, of normal habit of growth for species, free from disease, insect eggs and larvae. Specified sizes are before pruning and measured with branches in normal position.
- C. Ornamental and Shade Trees: Nursery grown (unless otherwise noted), healthy, vigorous, full-branched, well shaped, symmetrical, trunk diameter and height requirements as specified. Balls on balled and burlapped (B&B) trees shall be firm, neat, slightly tapered and well burlapped. Trees (B&B and container grown) with loose or broken balls shall be rejected. Balled and burlapped root balls shall be nine (9) inches in diameter for each inch caliper, measured six (6) inches above root ball for up to and including four (4) inch caliper, and twelve (12) inches above root ball for trees larger than four (4) inch caliper. Trees shall be free of physical damage such as scrapes, bark abrasions, split branches, mistletoe or other parasitic growth.

2.2 SOIL PREPARATION MATERIALS

A. Sandy Loam:

1. Friable, fertile, dark, loamy soil, free of clay lumps, subsoil, stones, and other extraneous material and reasonably free of weeds and foreign grasses. Loam containing Dallisgrass or Nutgrass shall be rejected.
2. Physical properties as follows:
Clay - between 7-27 percent
Silt - between 15-25 percent
Sand - less than 52 percent
3. Organic matter shall be 3%-10% of total dry weight.
4. If requested, provide a certified soil analysis conducted by an approved soil testing laboratory verifying that sandy loam meets the above requirements.

B. Bed Mix:

1. Planting Beds: Professional Bedding Soil as supplied by Living Earth Technology (The LETCO Group L.P.), Dallas, Texas or pH balanced, Ready-To-Plant Mix as supplied by Soil Building Systems, Dallas, Texas.

C. Commercial Fertilizer: 10-20-10 or similar analysis. Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) with a minimum 8% sulphur and 4% Iron, plus micronutrients.

D. Peat: Commercial sphagnum peat moss or partially decomposed shredded pine bark or other approved organic material.

2.3 MISCELLANEOUS MATERIALS

- A. Steel Edging: 1/8" x 4" x 16' - dark green, DURAEDGE® steel landscape edging manufactured by The J.D. Russell Company.

- B. Mulch: Double ground partially decomposed dark brown shredded hardwood bark mulch as distributed by Living Earth Technologies (The LETCO Group L.P.), (972) 869-4332, Dallas, Texas.
- C. Staking Material for Trees:
 - 1. Post: Studded T-Post, #1 Armco with anchor plate; 6'-0" length; paint black.
 - 2. Wire: 12 gauge, single strand, galvanized wire.
 - 3. Treestrap:
 - a. Manufacturer: GCS Inc., tel. 1-800-360-3584.
 - b. Description: 1 inch wide green colored Original Treestrap with two brass grommets per strap.
 - c. Size: For 2-4 in. cal. trees, #1018, 18 in. long. For 4-6 in. cal. trees, #2024, 24 in. long.
 - d. Source: Southwest Landscape Nursery Co., Carrollton, TX, tel. 972-245-4557.
- D. Gravel: Washed native gravel, graded 1 in. to 1-1/2 in.
- E. Filter Fabric: Mirafi 140N by Celanese Fibers Marketing Company, available at Lofland Co., (214)631-6699 or approved equal.
- F. Wrapping Material: Waterproof crepe wrapping paper. Clark's Tree Wrap, 4" wide manufactured by Walter E. Clark & Son, Inc., local contact: Frank B. Catalani & Associates, Corinth, TX, tel. 940-321-2596.
- G. Soil Saver: Heavy duty just mesh, Soil Saver, in 4'-0" wide rolls, available from Jim Walls Co., Dallas TX, tel. (972) 239-8577.

PART 3 - EXECUTION

3.1 INSPECTION

- A. Examine subgrade upon which work is to be performed and verify detrimental conditions affecting the work. Notify General Contractor or Architect of unsatisfactory conditions. Do not proceed with work until unsatisfactory conditions have been corrected in compliance with construction documents. Refer to paragraph 1.6 - Job Conditions, herein.

3.2 TREE PLANTING

- A. Stake tree locations for approval by Architect.
- B. Tree Pit Excavation: Excavated soil may be used for shade tree backfill if approved by architect. Backfill must be free of subsoils, rock, caliche, and other extraneous material. If backfill is not acceptable, use sandy loam.

C. Percolation Test: After tree pits are excavated, fill pits with water to determine if pits will adequately drain. If water does not percolate from pits within 24 hours, provide sump pits as detailed on the Drawings. If water does drain from pit, do not install gravel and sump pipe.

D. Shade Trees:

1. Plant in pits twice the diameter of the root balls or to the curb or pavement edge.
2. Backfill with 5 parts excavated soil (or sandy loam) and 1 part peat. Remove excess excavated soil from site. Carefully settle by hand watering to prevent air pockets and to thoroughly settle soil around tree ball.

E. Ornamental Trees:

1. Plant in pits 12 inches greater in diameter than tree ball, backfill with Bed Mix. Remove excavated soil from site. Carefully settle by hand watering to prevent air pockets and to thoroughly settle soil around tree ball.
2. Determine direction of staking and rotate plants in pit to take advantage of optimum stem orientation.

3.3 TREE SAUCERS

- A. Form a 4-inch high saucer around each tree planted in the lawn areas for deep watering. Rake saucer smooth. Add mulch to the top of the ball 3 in. deep and 3 in. clear of trunk and continue deep watering as required to keep uniform moisture around the root ball until final acceptance.

3.4 TREE STAKING

- A. Stake trees as detailed on Drawings immediately following planting operation. Take precautions during staking operation to prevent damage or injury to branches. Orient stakes within each cluster or row of trees in same direction.

3.5 PRUNING

- A. Prune newly planted as directed by Architect following Fine Pruning, Class I pruning standards provided by National Arborist Association. In general, remove at least one-third of wood by thinning. Do not cut back terminal branches. Remove sucker growth and broken or badly bruised branches.

3.6 TREE WRAPPING

- A. Wrap Shumard Red Oaks. Extend wrapping around trunk from ground to a point immediately below lowest branch of each tree or as directed. Securely fasten in place with tacks or staples, so wrapping will remain in place one (1) year.

3.8 STEEL EDGING

- A. Provide steel edging at interface of planted areas and lawn areas unless indicated otherwise on Drawings. Set edging as indicated with top of edging one inch above finish grade on lawn side.

3.9 PLANT BED PREPARATION

A. Planting Beds:

1. Excavate or fill to provide 6 inches of Bed Mix for shrubs, and groundcover. Haul off excavated soil. Where bed areas have been left deeper than 6 inches, backfill with sandy loam to within 6 inches of finish grade followed by 6 inches of Bed Mix material as noted below.
2. Place Bed Mix 3 in. deep into bed area and thoroughly rototill 2" to 3" deep into the subgrade. Rake out any clods, rocks, or debris and complete backfill of Bed Mix to finish grade. Do not rototill this final 3 in. backfill layer.

- B. Add 4 pounds commercial fertilizer per 100 SF of bed area and mix thoroughly.

3.10 SHRUB AND GROUNDCOVER PLANTING

- A. Place plants in position on bed areas before cans have been removed. Obtain approval from Architect. Architect reserves right to interchange or shift locations of plants prior to planting. Do not remove burlap from B&B plants. Plant where located, setting plants with tops of balls even with tops of beds, and compact soil carefully around each plant ball. Water each plant thoroughly to eliminate air pockets. Carefully prune plants to remove dead or broken branches and hand-rake bed areas to smooth even surfaces.

3.12 MULCH TOP DRESSING

- A. After planting has been completed and approved by Architect, top dress bed areas with mulch, 2 inches deep. Delay this operation until near final acceptance.

3.13 CLEAN UP

- A. Keep premises neat and orderly including organization of storage areas. Remove trash and debris from excavated planting areas, preparing beds, or planting plants from site daily as work progresses. Keep paved areas clean by sweeping or hosing.

END OF SECTION

SECTION 02930 - LAWNS AND GRASS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Fine grading, fertilizer, hydromulching and sodding of Bermudagrass.
2. Seeding of native grass mix
3. Maintenance until an approved stand of grass.

B. Related Sections:

1. Section 02310 -- Topsoiling and finish grading
2. Section 02810 -- Irrigation system
3. Section 02900 -- Planting

1.2 QUALITY ASSURANCE

- A. Deliver fertilizer to site in original, sealed containers bearing manufacturer's guaranteed statement of analysis.
- B. Complete herbicide application by a licensed applicator, with current license in good standing, thoroughly trained in the scope of work involved.

1.3 SPECIAL GRASSING PROVISIONS

- A. Water: Will be available on site. Provide necessary hoses and other watering equipment required to complete work. Refer to drawings for irrigation limits.
- B. Maintenance: Until substantial completion, and until an approved stand of grass is achieved, maintain lawn areas by watering, mowing, weeding, spraying, cleaning and replacing as necessary to keep the turf in a vigorous, healthy condition.
1. Watering: As necessary to keep top 2 inches of soil moist.
 2. Mowing: Mow newly planted grass areas weekly after initial growth reaches 2-1/2 inches.
 3. Weeding: Remove weeds and foreign grass over lawn areas at least once a week. Herbicides may be used only when approved by Architect.
- C. Acceptance: The work will be accepted when a completed undamaged stand of grass, free of weeds, is achieved and as approved by Owner and Architect.

1.4 REFERENCED STANDARDS

- A. ASTM - American Standard Testing Material - sand.
- B. Texas Seed Law & Regulations -- latest edition.

1.5 CONDITION OF SURFACES

- A. Lawn areas will be graded with topsoil as noted in Section 02310.

1.6 SCHEDULES

A. Sodding:

1. Sodding operations can be performed year-round weather permitting. Do not install sod on frozen ground or if forecast calls for freezing conditions.
2. Do not place sod until fine grading is approved.

B. Seeding:

1. Bermudagrass and Native grass mix: Complete seeding between May 1 and September 15, weather permitting.

PART 2 - MATERIALS

2.1 GRASSES

A. Seed:

1. Common Bermudagrass (*Cynodon dactylon*): Extra fancy, hulled and treated lawn type seed with purity of 95% or better and germination of 85% or better, and per requirements of Texas Seed Law. Weed content less than 1/2%. No noxious weeds.
2. Native Grass Mix:

B. Sod:

1. Common Bermudagrass: Free of foreign weeds and grasses. Cut sod with a full 3/4 inch heavy clay soil covering roots. Do not stack for more than 48 hours between time of cutting and planting. Any sod not planted within 24 hours after receipt on site shall be removed and not planted.

2.2 FERTILIZER

- A. Provide a complete fertilizer, part of elements of which are derived from organic sources and shall include trace elements. Fillers to be sulphur and iron sulphate.
 1. First Application: 10-10-10 or similar analysis with minimum 8% sulphur and 4% iron, plus micronutrients.
 2. Second Application: 20-5-10 or similar analysis. Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) plus minimum 8% sulphur and 4% iron plus micronutrients.

2.3 MULCH FIBER

- A. Virgin wood cellulose fiber for hydromulch - Weyerhaeuser or Conweb with green color additive.

2.4 SHARP SAND

- A. Clean washed sand (fine aggregate) ASTM C-33.

2.5 TACKIFIER

- A. Natural, non-asphaltic vegetable gum with gelling and hardening agents.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Grading: Verify that lawn areas have been graded as provided in Section 02300. Do not proceed with final grading until prior earthwork is in accordance with Contract Documents.

3.2 FINAL GRADING

- A. Loosen areas to be grassed with rototiller or similar equipment and fine rake to break up lumps to produce a smooth, even grade, free from unsightly variations, ridges or depressions. Leave grade next to walks and curbs 1 in. low.
- B. Remove and dispose of stones 1 inch or larger, sticks, roots, other debris and grass stubble exposed during this operation.
- C. Do not vary final grades more than 0.1 foot from finish elevations.
- D. Receive approval of fine grading from Architect prior to grass planting.

3.3 FERTILIZING

- A. First Application:
 - 1. Distribute 10-10-10 fertilizer uniformly at rate of 15 pounds per 1,000 square feet and rake into seed bed prior to sodding.
- B. Second Application:
 - 1. Repeat fertilization with 20-5-10 commercial fertilizer after first cutting at rate of 15 pounds per 1,000 square feet.
- C. Water: Immediately water in fertilizer after each application.

3.4 GRASS PLANTING

- A. Sod: After final grading, place sod so edges are touching in neat even rolls. Lightly topdress with sharp sand to fill voids and grade smooth. Roll to eliminate undulations and to achieve a smooth even grade.

B. Seeding:

1. At time of seeding, soil to be moist but not muddy and wind velocity shall not exceed 10 miles per hour. Add water if required to moisten soil.
2. Immediately before sowing seed, lightly rake areas to scarify ground surface and to provide a smooth, even grade and friable seed bed.
3. Seeding rates:
 - a. Hydromulch Bermuda seed evenly at rate of two (2) pounds per 1,000 square feet with wood cellulose fiber at rate of fifty (50) pounds per 1,000 square feet.
 - b. Hydroseed native mix at a rate of 3 lbs. per 1000 square feet.
4. Add tackifier to mix for slopes 4:1 or steeper or areas subject to erosion at rate of one pound per bag of mulch.

3.5 PERFORMANCE

- A. Establish a dense lawn of permanent grasses, free from lumps and depressions.
- B. Regrass any area failing to show uniform cover. Such replacement shall continue until a dense lawn is established. Scattered bare or dead spots will not be allowed.
- C. Mow and edge lawn a minimum of three times, each time after lawn has reached a height of 2-1/2 inches. Mow to a height of 2 inches returning clippings to lawn.
- D. Keep lawn areas weeded removing broadleaf and grassy weeds as required.

3.6 GRADE MAINTENANCE AND EROSION DAMAGE

- A. Maintain original grades of lawn areas after commencement of planting and during maintenance period.
- B. Provide surface repair to ruts, ridges, tracks. Replant areas as required for final acceptance.

3.7 ACCEPTANCE

- A. The work will be accepted when a dense, undamaged stand of grass, free of weeds, is achieved, as approved by Architect.

3.8 CLEAN UP

- A. Keep premises neat and orderly including organization of storage areas. Remove trash and debris resulting from lawn preparation from site daily as work progresses. Leave paved areas in a broom clean condition by sweeping or hosing.

END OF SECTION

SECTION 03100 – CONCRETE FORMWORK

PART 1 - GENERAL

1.1 DESCRIPTION:

- A. Provide required formwork and related accessories for proper construction of cast-in-place structural concrete work.
- B. Work, items and requirements specified elsewhere that apply and/or relate to this Section include:
 - 1. Reinforcement and related accessories - Section 03200.
 - 2. Cast-in-place concrete - Section 03300.

1.2 WORK INSTALLED BUT FURNISHED IN OTHER SECTIONS:

- A. Built-in-anchors, inserts and bolts for connection of other materials.
- B. Built-in-sleeves.

1.3 QUALITY ASSURANCE:

- A. Design criteria: Conform to ACI 347-(Latest Edition), Chapter
 - 1. The design and engineering of formwork, as well as its construction, shall be the responsibility of the contractor.
- B. Allowable Tolerances: Conform to ACI 347-(Latest Edition), 3.3.1.

1.4 STORAGE OF MATERIALS:

- A. Store form materials and accessories on dunnage and under cover of protective sheeting.

PART 2 - PRODUCTS

2.1 MATERIALS:

- A. Forms:
 - 1. Framing: Kiln dried softwood lumber, PS 20-70.
 - 2. Plyform: B-B plyform, sanded, Class I, EXT-DEPA, grade trademarked of APA, PSI-66. Fiber or metal forms may be used in lieu of plywood, subject to Architect's approval.
 - 3. Void Forms: Moisture resistant treated corrugated cardboard; biodegradable; structurally sufficient to support weight of wet concrete mix until initial set; sizes as indicated on drawings.
- B. Rustications, Bevels, Chamfers: Mill from Northern White Pine, smooth and free of irregularities.

- C. Shores: Patented shores of adequate strength and bracing to safely support imposed loads.
- D. Form Oil: Non-staining, paraffin-base oil having a specific gravity of between 0.8 and 0.9.
- E. Form Ties: Bolts, rods, or patented devices having a minimum tensile strength of 3,000 lbs., adjustable in length, free of lugs which would leave a hole larger than 5/8" in diameter and having a full one-inch depth of break-back.

PART 3 - EXECUTION

3.1 CONSTRUCTION AND ERECTION:

- A. Construct forms in accordance with ACI 347.
- B. Build forms to conform to shapes, lines and dimensions of detailed member of concrete construction. Set to line and grade, and brace and secure so as to withstand placing of concrete and maintain their shape and position.
- C. Construct forms with care to produce concrete surfaces without unsightly or objectionable form marking exposed concrete surfaces. Provide temporary inspection and clean out openings in bottom of wall and column forms and elsewhere as required by Architect. Seal joints after closing.
- D. Thoroughly clean surfaces of form material and remove nails before reuse. Do not reuse damaged or worn forms. Coat contact surfaces of forms with non-staining form oil prior to placing metal reinforcement.
- E. Install void forms. Protect from moisture before concrete placement. Protect from crushing during concrete placement.
- F. Immediately before placing concrete, clean forms of chips, sawdust, and other debris. Immediately after removal of forms, remove form ties, wires and other defects and patch.

3.2 INSERTS AND ACCESSORIES:

- A. Make provisions for required installation of accessories, bolts, hangers, sleeves, anchor slots and inserts cast in concrete, as required by Drawings and other trades. Obtain suitable templates or instructions for installation of items. Place expansion joints where detailed and required.

3.03 REMOVAL OF FORMS AND SHORING:

- A. Removal of forms and shores shall be in accordance with ACI 347.+
- B. Do not remove shoring until members have acquired specified design strength required to support their own weight and loads.

END OF SECTION

SECTION 03200 - CONCRETE REINFORCEMENT AND EMBEDDED METAL ASSEMBLIES

PART 1 - GENERAL

1.1. WORK INCLUDED

- A. Furnish all labor, materials, services, equipment, and appliances required in conjunction with fabrication, delivery, and placement of reinforcement and embedded metal assemblies in cast-in-place concrete complete, including, but not limited to the following:
 - 1. Prepare shop drawings of reinforcing steel.
 - 2. Furnish and place reinforcing steel.
 - 3. Furnish reinforcing for drilled piers.
- B. Related Work Specified Elsewhere:
 - 1. Testing laboratory services - Section 01451
 - 2. Concrete formwork - Section 03100
 - 3. Cast-in-place concrete - Section 03300

1.2. TESTING LABORATORY SERVICES

- A. An independent testing laboratory shall be employed by the Owner for inspection of reinforcing steel and embedded metal assemblies. Refer to Section 01451. Inspection by the Owner's laboratory shall not relieve the Contractor of responsibility for quality control.
- B. The Contractor shall allow for a minimum of 2 days notice to be given the Laboratory for inspection of the work.

1.3. QUALITY ASSURANCE

- A. Fabricator shall have a minimum of 3 years experience in similar applications. Experience shall be relevant to the anticipated fabrication and placing methods and techniques required.
- B. Codes and Standards:
 - 1. Concrete Reinforcing Steel Institute: "Manual of Standard Practice"
 - 2. American Concrete Institute, ACI 318: "Building Code Requirements for Structural Concrete".
 - 3. American Concrete Institute, ACI 117: "Standard Specifications for Tolerances for Concrete Construction and Materials".
 - 4. American Institute for Steel Construction, AISC "Specification for Structural Steel Buildings" including the "Commentary" and all supplements.
 - 5. American Welding Society, AWS D1.1: "Structural Steel Welding Code".
 - 6. American Concrete Institute, ACI 315: "Details and Detailing of Concrete Reinforcing".

1.4. SUBMITTALS

A. Shop Drawings:

1. Submit shop and installation drawings of metal reinforcement for review of the Architect in accordance with Section 01340. Comply with ACI 315, "Details and Detailing of Concrete Reinforcement." Show bar schedules, stirrup spacing, diagrams of bent bars, arrangements, and assemblies as required for fabrication and placement of concrete reinforcement.

- ##### B. Mill Test Reports:
- Certified copies, evidencing compliance with all requirements of these Specifications, shall be delivered to the Contractor with all deliveries of reinforcing steel. Contractor will forward copies to the Architect for the project files.

1.5. DELIVERY AND STORAGE

- ##### A.
- Stack reinforcing steel in tiers and mark so that each length, size, shape, and location can be readily determined. Exercise care to maintain reinforcing free of dirt, mud, paint, and rust.

PART 2 - PRODUCTS

2.1. MATERIALS

- ##### A.
- Reinforcing shall comply with the following:

1. Reinforcing Bars: New deformed billet steel conforming to the requirements of ASTM A615 grade and size shown on the drawings

2.2. METAL ANCHORAGE & CONFINEMENT ASSEMBLIES

- ##### A.
- Steel Shapes and Plates and Rods: Conform to ASTM A36.
- ##### B.
- Headed Stud Anchors: Headed Studs welded by full fusion process as furnished by Nelson Stud Welding Co.
- ##### C.
- Bolts: Conform to ASTM A307 with regular hexagon nuts and carbon steel washers.
- ##### D.
- Welding Electrodes: ASTM Designation A233, Series E370 - AWS 5.5.
- ##### E.
- Reinforcing Bars to be Welded: ASTM A706.
- ##### F.
- Deformed Bar Anchors: ASTM A-108 cold worked steel wire per ASTM A-496 with minimum yield strength of 70,000 psi welded to steel as shown on the drawings. Anchors shall be flux filled deformed bar anchors by Nelson Stud Division of TRW. All welding shall be in accordance with the manufacturer's recommendations.
- ##### G.
- All metal assemblies shall be hot-dip galvanized.

2.3. CONCRETE ACCESSORIES

- A. Concrete accessories including bar support, chairs, spacers, etc., shall be cold-drawn wire and shall be fabricated in accordance with the requirements of Chapter Seven of the A.C.I. Standard 315 with heights as required. Bar supports for concrete will be exposed.
 - 1. Use wire bar type supports complying with CRSI recommendations, unless otherwise specified.
 - 2. For slab-on-grade, use supports with sand plates or horizontal runners where base material will not support chair legs.
 - 3. For exposed-to-view concrete surfaces where legs of supports are in contact with forms, provide supports with plastic protected legs (CRSI Class 1) or stainless steel legs (CRSI Class 2).
 - 4. For abrasive blasted or bush hammered concrete, provide plastic protected bar supports (CRSI Class 1).
 - 5. Over water proofing membranes use precast concrete block bar supports.

2.4. FABRICATION OF REINFORCEMENT

- A. Fabricate reinforcing bars to conform to required shapes and dimensions. Fabrication tolerances shall not exceed tolerances specified in ACI 117 or CRSI "Manual of Standard Practice".

2.5. FABRICATION OF METAL ACCESSORIES AND EMBEDDED METAL ASSEMBLIES

- A. Fabricate and assemble structural steel items in the shop. Shearing, flame cutting, and chipping shall be done carefully and accurately. Holes shall be cut, drilled or punched at right angles to the surface of the metal and shall not be made or enlarged by burning. Holes shall be clean-cut without torn or ragged edges. Welded construction shall conform to the AISC Specifications for the Design, Fabrication and Erection of Structural Steel for Buildings and AWS D12.1 Welding shall be done by AWS certified welders.
- B. Welding of deformed bar anchors and headed stud anchors shall be done by full-fusion process equal to that of Nelson Stud Welding Company or KSM Welding Services Division, Omark Industries.
- C. Welding of reinforcing bars shall be done in strict accordance with AWS requirements, using recommended preheat temperatures and electrodes for the type of reinforcing being welded. Bars larger than No. 9 shall not be welded. All welding shall be performed subject to inspection and testing of the Owner's testing laboratory.
- D. Coatings, where required, shall be applied after fabrication.

PART 3 - EXECUTION

3.1 MATERIAL STORAGE

- A. Reinforcing steel shall be stacked in tiers. Care shall be exercised to maintain all reinforcement free of dirt, mud, paint, rust, etc.

3.2 GENERAL

- A. Reinforcing steel of the sizes, shapes, lengths, spacing and other dimensions shown shall be placed where shown on the drawings. Details of reinforcing shall conform to A.C.I. Building Code Requirements for Reinforced Concrete (A.C.I. 318).

3.3 MARKING

- A. Bars shall be plainly marked. Bundles shall be limited to one (1) length, and each bundle shall be tagged with metal tags.

3.4 CLEANING

- A. Reinforcement shall be thoroughly cleaned of rust, mill scale, dirt, oil or other coatings which reduce the bonding to the concrete.

3.5 BENDING

- A. Bars shall be bend cold. Heating of reinforcement, or handling by makeshift methods, will not be permitted and bars having kinks or bends not required shall not be used.

3.6 PLACING

- A. Reinforcement shall be accurately placed and securely saddle tied at every other intersection with No. 18 gauge black annealed wire, and shall be rigidly held in place during the placing of the concrete by means of metal chairs or spacers.
- B. Bars in concrete walls shall be held in position, and to proper clearance, by means of concrete or metal spacers made especially for the locations where spacers are required.
- C. Bars in beams and slabs shall be held to exact location during placing of concrete by spacers, chairs, or other necessary supports with the following tolerances:
 - 1. Top bars in slabs and beams:
 - a. Members 8 in. deep or less: + 1/4 in.
 - b. Members more than 8 in. but not over 2 ft. deep: + 1/2 in.
 - c. Members more than 2 ft. deep: + 1 in.
 - 2. Lengthwise of members: + 2 in.
 - 3. Concrete cover to formed surfaces: 1/4 in.
 - 4. Minimum spacing between bars: 1/4 in.

- D. Tie wire shall not be placed in contact or within 1-1/2" of any exposed surface.

3.7 CONCRETE PROTECTION

- A. Concrete protection for reinforcing steel shall not be less in any direction than the following:
1. Reinforcing in slabs on grade and beams deposited against the ground: 3 inches.
 2. Reinforcing in formed beams, columns, and girders: 1-1/2 inches.
 3. Grade beams and exterior face of walls and columns exposed to the weather or in contact with the ground: 2 inches.
 4. Interior faces of walls: 1 inch.
 5. Beam bottoms formed with fiberboard void boxes: 2 inches.
 6. Structural slabs on carton form: 1 inch.
- B. Tolerances in layout, fabrication, formwork, and placing shall not permit a reduction in the specified concrete protection beyond the specified tolerance for concrete cover.

3.8 METAL ACCESSORIES

- A. All galvanizing shall be removed in areas to receive field welds prior to making the welds. Areas where paint has been removed or damaged shall be field painted with the specified paint or galvanizing compound.

END OF SECTION

SECTION 07921 - SITE JOINT SEALANTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Sealant over exterior joints in concrete walks and paving.
2. Refer to civil for parking/drive sealants.

B. Related Sections:

1. Section 01770 - Contract closeout
2. Section 02520 - Portland Cement Concrete Walks and Paving

1.2 DEFINITIONS

A. Use definitions in ASTM C717.

B. Non-Bleeding: Not capable of exuding liquid chemical components of sealant.

C. Non-Staining: Not capable of discoloring joint substrate.

D. Sealant System: Sealant, sealant backing, and primer intended for use in particular condition.

1.3 SUBMITTALS

A. Product Data:

1. Submit product data for each product.
2. Include data on sealants, primers, backup, bond breakers and accessories proposed for use.
3. Include color charts indicating manufacturer's full color range available of each sealant type for Architect's initial selection.

C. Samples: Submit three 1/4 inch diameter by 3 inch long samples illustrating sealant colors for each product exposed to view.

D. Submit the following Informational Submittals:

1. Certifications specified in Quality Assurance article.
2. Qualification Data: Manufacturer's and installer's qualification data.
3. Manufacturer's instructions. Include requirements for surface preparation, priming, joint size ratios, adhesion testing, and perimeter conditions requiring special attention.

1.4 QUALITY ASSURANCE

A. Single Source Responsibility:

1. Provide products for each sealant system from one manufacturer for entire Project, unless otherwise acceptable to Architect.
2. Provide products from a single manufacturer to ensure material compatibility where different sealant materials come in direct contact with each other.
3. Provide each sealant system as complete unit, including accessory items necessary for proper function.

B. Manufacturer Qualifications: Company specializing in manufacturing products specified in this Section with minimum 10 years documented experience.

C. Applicator Qualifications: Acceptable to manufacturer, specializing in applying sealants, with documented experience on at least 10 projects of similar nature in past 5 years.

D. Certifications:

1. Manufacturer's certification that products:
 - a. Furnished for the specific project meet or exceed specified requirements.
 - b. Assembled for each joint are compatible with each other and with joint substrates under conditions of service and application.
 - c. Are suitable for the indicated use.

1.5 DELIVERY, STORAGE AND HANDLING

A. Deliver materials to site in unopened containers and bundles with labels indicating:

1. Manufacturer's name.
2. Product name and designation.
3. Color.
4. Expiration period for use.
5. Working life.
6. Curing time.
7. Mixing instructions for multi-component materials.

B. Storage and Protection:

1. Store products within manufacturer's required temperature and humidity ranges.
2. Prior to use, condition products within manufacturer's required temperature range, humidity range, and time period.

1.6 PROJECT CONDITIONS

A. Environmental Requirements:

1. Perform sealing when the following are within manufacturer's limits during and for 24 hours after sealant installation:
 - a. Ambient and surface temperatures.
 - b. Relative humidity.
2. Do not apply sealants to wet or frozen surfaces.

1.7 WARRANTY

A. Warrant installed products to be free from defects in material, labor, or installation techniques for two (2) years.

B. Include warranty coverage for installed sealants and accessories which:

1. Fail to achieve air tight seal.
2. Fail to achieve watertight seal.
3. Exhibit loss of adhesion.
4. Exhibit loss of cohesion.
5. Do not cure.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

A. Acceptable Urethane Sealant Manufacturers:

1. Mameco International, Inc.
2. Pecora Corporation
3. Sika Corporation
4. Sonneborn Building Products/ChemRex, Inc.
5. Tremco Corporation

2.2 MATERIALS

A. (Type I): Urethane—Multi-Component (Designation U-MC): self-levelling:

1. Description:
 - a. ASTM C920:
 - 1) Type: M
 - 2) Grade: P
 - 3) Class: 25
 - 4) Uses: T, M, A, O.
 - b. Chemical curing, non-staining, non-bleeding.
 - c. Joint movement range without cohesive/adhesive failure: Plus 25 percent to minus 25 percent of joint width.
 - d. Color: Selected by Architect from manufacturer's full color range.

B. (Type II): Urethane – Multi-Component (Designation U-MC):

1. Description:
 - a. ASTM C920:
 - 1) Type: M
 - 2) Grade: NS
 - 3) Class: 25
 - 4) Uses: T, M, A, O
 - b. Shore A hardness: Between 45 and 50.
 - c. Chemical curing, non-staining, non-bleeding.
 - d. Joint movement range without cohesive/adhesive failure: Plus 25 percent to minus 25 percent of joint width.
 - e. Color: Selected by Architect from manufacturer's

C. (Type III): Urethane – Multi-Component (Designation U-MC) – non-sag:

1. Description:
 - a. ASTM C920:
 - 1) Type: M
 - 2) Grade: NS
 - 3) Class: 25
 - 4) Uses: NT, M, A, O.
 - b. Chemical curing, non-staining, non-bleeding.
 - c. Joint movement range without cohesive/adhesive failure: Plus or minus 50 percent.
 - d. Color: Selected by Architect from manufacturer's full color range.

2.3 ACCESSORIES

A. Joint Cleaner:

1. Chemical cleaners required by sealant manufacturer for substrates encountered, compatible with sealant backing bond breaker materials.
2. Free of substances capable of staining, corroding, or harming:
 - a. Joint substrates.
 - b. Adjacent nonporous surfaces.
 - c. Sealant.
 - d. Sealant backing.
3. Formulated to promote optimum adhesion of sealants to joint substrates.

B. Primer:

1. Dyed coating material required by sealant manufacturer for enhancing sealant adhesion to joint substrates.
2. Non-staining to joint substrate beyond the substrate surface.
3. Required for use on horizontal traffic-bearing joints and on vertical joints if recommended by manufacturer.

C. Backer Rod:

1. Neoprene, butyl, EPDM, or silicone tubing compliant with ASTM D1056.
2. Shore A hardness of 70.
3. Compatible with sealant, joint substrates, primers, and other sealant backing bond breakers.
4. Use sealant backing bond breaker tape to separate sealant from rod.
5. Unless otherwise required by sealant manufacturer, oversize rod to be larger than joint width by 25 percent.

D. Sealant Backing Bond Breaker Tape:

1. Pressure sensitive polyethylene tape or tetrafluoroethylene self-adhesive tape required by sealant manufacturer to suit application.
2. Minimum Thickness of 0.275 mm.

2.4 MIXES

- A. Comply with manufacturer's instructions.
- B. Mix thoroughly with mechanical mixer without mixing air into sealants.
- C. Continue mixing until sealant is uniform in color and free from streaks of unmixed materials.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Ensure that concrete and masonry have cured minimum of 28 days.
- B. Verify that sealant backing is compatible with sealant.
- C. Verify that substrate surface:
 1. Is within manufacturer's moisture content range.
 2. Complies with manufacturer's cleanliness and surface preparation requirements.
- D. Joint Width:
 1. Verify joints are greater than minimum widths required by manufacturer.
 2. If joints are narrower than minimum required widths, widen narrow joints to indicated width.
 3. Do not place sealant in joints narrower than manufacturer's required minimum.

3.2 PREPARATION

- A. Prepare, clean, and prime joints in accordance with manufacturer's instructions.

- B. Remove loose materials and matter which might impair adhesion of primer and sealant to substrate.
- C. Remove form release agents, latents, and chemical retarders, which might impair adhesion of primer and sealant to concrete and masonry surfaces.
- D. Comply with ASTM C1193.
- E. Protect elements adjoining and surrounding work of this Section from damage and disfiguration.
- F. Priming:
 - 1. Prime joint substrates.
 - 2. Comply with manufacturer's sequencing requirements for joint priming and sealant backing bond breaker rod installation to assure required primer application coverage and rate without placement of primer on backer rod surface to be in contact with sealant and avoid three-sided sealant adhesion.
 - 3. Do not allow spillage and migration of primer onto surfaces not to receive primer.
 - 4. Install sealant to primed substrates after primer has cured.
- G. Masking Tape:
 - 1. Use masking tape to prevent contact of primer and sealant with adjoining surfaces that would be permanently stained or damaged by:
 - a. Contact with primer and sealant.
 - b. Cleaning methods used to remove primer and sealant smears.
 - 2. Place continuously along joint edges.
 - 3. Apply masking tape so it does not shift in position after placement.

3.3 APPLICATION

- A. Support sealants from back with backer rod or joint filler.
- B. Backer Rod:
 - 1. Measure joint dimensions and size materials to achieve manufacturer-required width-to-depth ratios.
 - 2. Install using blunt instrument to avoid puncturing.
 - 3. Do not:
 - a. Twist, puncture, and tear material.
 - b. Leave gaps between ends of material pieces.
 - c. Stretch or compress material along its length.
 - d. Stretch or compress tape material along its width.
 - 4. Install to provide optimum joint profile and in manner to provide not less than 6 mm (1/4 inch) sealant depth when tooled.

5. Install tape where insufficient joint depth makes use of rod not possible. Match tape width to joint width to prevent three-side adhesion. Do not wrap tape onto sides of the joint.
6. Replace backing bond breaker materials which have become wet with dry materials prior to sealant application.

C. Sealant:

1. Install sealants at same time as installation of backer rod materials.
2. Do not exceed manufacturer's required:
 - a. Material shelf life.
 - b. Material working life.
 - c. Installation time after mixing.
3. Comply with manufacturer's requirements for applying different sealant materials in direct contact with each other.
4. Use gun nozzle size to suit joint size and sealant material.
5. Install sealant with pressure-operated devices to form uniform continuous bead.
6. Use sufficient pressure to fill voids and joints full.
7. Install to adhere to both sides of joint.
8. Install sealant free of air pockets and embedded matter.
9. Recess sealant 3 mm (1/8 inch) from surface of pavements and horizontal surfaces.

D. Sealant Tooling:

1. Comply with manufacturer's tooling method requirements.
2. Tool sealant within manufacturer's tooling time limits.
3. Tooling liquids:
 - a. Comply with manufacturer's requirements regarding use.
 - b. Do not use when not permitted by manufacturer.
 - c. Do not allow tooling liquids to come in contact with surfaces receiving sealant.
4. Produce smooth exposed surface.
5. Tool sealant to be free of:
 - a. Air pockets and voids.
 - b. Embedded impurities.
 - c. Surface ridges, sags, and indentations.
6. Achieve full sealant contact and adhesion with substrate.
7. Form a concave tooled joint shape indicated in Section A of Figure 5 of ASTM C1193, unless otherwise indicated.
8. Remove excess sealant from surfaces adjacent to joint.

E. Masking Tape:

1. Remove immediately after tooling sealant and before sealant skin forms.
2. Remove without disturbing sealant.

3.4 CLEANING

- A. Clean excess sealants and sealant smears from adjacent surfaces as application progresses; comply with sealant manufacturer's requirements and manufacturer of surface in which joints occur.
- B. Repair or replace defaced or disfigured finishes caused by work of this Section and replace where installation techniques result in unsatisfactory joining of materials and unsightly conditions.

3.5 PROTECTION

- A. Protect sealants from contamination until cured.
- B. Protect sealant joints in horizontal surfaces from foot and vehicular traffic until cured.

3.6 SCHEDULE

<u>Joint Location</u>	<u>Type</u>
Horizontal joints subject to pedestrian or vehicular traffic	
Slopes less than 1/4 in. per ft.	I
Slopes 1/4 in. per ft. and greater	II
B. <u>Vertical joints in masonry and cast stone</u>	III

END OF SECTION

EXHIBIT D

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address):

Frisco 870008 0472 (Hummingbird Park)
Hummingbird Neighborhood Park
12875 Honey Grove Drive
Frisco, Texas 75035

THE OWNER:

(Name and address):

City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

THE ARCHITECT:

(Name and address):

NJB (Newman, Jackson, Beiberstein)
Banner Place North
12770 Coll Road, Suite 210
Dallas, TX 75251

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or

continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the

Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important

communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the Indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and

deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor. Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§ 4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

§ 4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 6.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

1. change in the Work;
2. the amount of the adjustment, if any, in the Contract Sum; and
3. the extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an Itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to

payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

1. defective Work not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in

the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability Insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract

Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
3. After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
2. an act of government, such as a declaration of national emergency which requires all Work to be stopped;
3. because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work

by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- 1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- 1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- 2 accept assignment of subcontracts pursuant to Section 5.4; and
- 3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- 1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- 2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

Additions and Deletions Report for AIA[®] Document A201[™] - 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Frisco 870008 0472 (Hummingbird Park)
Hummingbird Neighborhood Park
12875 Honey Grove Drive
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City of Frisco
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NJB (Newman, Jackson, Beijerstein)
Banner Place North
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Dallas, TX 75251

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Certification of Document's Authenticity
AIA® Document D401™ - 2003

I, Robert B. Roder/mva, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:59:45 on 01/23/2008 under Order No. 1000309590, from AIA Computer Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 1997 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Robert B. Roder *John*
(Signed)

City Attorney
(Title)

5/12/08
(Dated)

SUPPLEMENTARY CONDITIONS TO THE CONTRACT FOR CONSTRUCTION

The following supplements modify, change, delete from or add to the "General Conditions of the Contract for Construction", AIA Document A201-1997. Where an Article of the General Conditions is modified or any Paragraph, Subparagraph, or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause shall remain in effect.

ARTICLE 1: GENERAL PROVISIONS

1.2.1.1 Add this new Subparagraph:

Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

1.2.1.2 Add this new Subparagraph:

The most recently issued document takes precedence over previously issued forms of the same document. If an item is shown one place in the Drawings, but not another, or called for in a schedule or the Specifications but not shown on the Drawings, it is to be included. The order of precedence of the Contract Documents is as follows with the highest authority listed first:

- a. Addendum to Standard Form of Agreement;
- b. The Agreement (except as expressly modified by any Addenda);
- c. Addenda;
- d. Supplementary Conditions of the Contract for Construction and other Division 1 Requirements of the Specifications;
- e. General Conditions; and
- f. Drawings and Specifications (other than the Supplementary Conditions and other Division 1 Requirements contained in the Specifications).

1.2.4 Add this new Subparagraph:

Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

1.2.5 Add this new Subparagraph:

SUPPLEMENTARY CONDITIONS TO THE CONTRACT FOR CONSTRUCTION

Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

1.5.2.1 Add this new Subparagraph:

Contractor shall fully acquaint itself with all above ground, visible existing conditions and limitations affecting the Work, including (without limitation) all property lines, visible utility locations, existing improvements, elevations, and site and local conditions. All dimensions and clearances necessary to the Work, as indicated on the Drawings and contained in the Specifications, shall be verified by Contractor at the job site and Contractor shall report any discrepancies to the Architect for adjustment before any Work affected thereby is prosecuted. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the above ground, visible conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment. The Owner assumes no responsibility or liability for the safety of the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Subparagraph.

1.5.2.2 Add this new Subparagraph:

By execution of Amendment 1 to the Agreement, Construction Manager specifically acknowledges and declares that the Contract Documents are sufficient to have enabled it to determine the Guaranteed Maximum Price, and that the Drawings and Specifications are sufficient to enable Construction Manager to properly construct the Work in accordance with codes, and otherwise to fulfill all of its obligations under the Contract Documents. Construction Manager shall carefully study and compare all existing conditions, Drawings, Specifications, and other Contract Documents; shall verify all figures on the Drawings before laying out the Work; shall take field measurements and verify field conditions; shall carefully compare such field measurements and conditions and other information known to Construction Manager with the Contract Documents before commencing activities; and shall give prompt notice to the Architect and Owner in writing, of all errors, inconsistencies, or omissions, which it may discover and obtain specific instructions in writing with respect thereto before proceeding with the Work. Construction Manager shall not take advantage of any apparent error or omission which may be found in the Contract Documents, but shall cooperate in good faith with the Owner and Architect to resolve any ambiguities, inconsistencies or defects in the Contract Documents in a manner that will not result in an increase in the Guaranteed Maximum Price or delay in the progress of the Work. Construction Manager shall not be entitled to an extension of

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the Contract Time to carry out any repairs or corrections of any construction caused by Construction Manager's failure to notify Architect and Owner of errors, omissions or inconsistencies in the Contract Documents discovered by Owner prior to the execution of the Work affected by such errors, omissions or inconsistencies. Errors or omissions in Contract Documents or the misdescription of details of Work manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Construction Manager from performing such omitted work or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications. The cost of such Work shall be included in the Cost of the Work, but in no event shall such Work entitle Construction Manager to an increase in the Guaranteed Maximum Price.

1.5.2.3 Add this new Subparagraph:

By agreeing to a Guaranteed Maximum Price for the entire Project, Contractor agrees with Owner that the Work required by the Contract Documents, including, without limitation, construction means, methods, procedures and techniques necessary to perform the Work, will be consistent with: (a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Work; and (c) requirements of any warranties applicable to the Work.

1.8 Add this new Paragraph:

When specific products, systems or items of equipment are referred to in the Contract Documents, any customary ancillary devices necessary for proper functioning which are typically furnished at no additional cost as part of an installation contract shall also be provided, but not including any manufacturers' options on any particular device, which device is specified in the Contract Documents. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of contract execution shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions, limitations or waivers that are inconsistent with the Contract Documents do not apply.

ARTICLE 2: OWNER

2.2.1 Delete the subparagraph in its entirety.

2.2.3 Add the following to the end of the Subparagraph:

The furnishing of surveys and legal descriptions shall not relieve Contractor from its duties under the Contract Documents.

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2.4.1- Delete the second sentence from the end "Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect."

2.4.2 Add this new Subparagraph:

After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

ARTICLE 3: CONTRACTOR

3.1.1 Delete the entire Subparagraph and replace it with the following:

The term "Contractor" means the Construction Manager or Construction Manager's authorized representative.

3.2.1 Add the following to the end of the Subparagraph:

If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

3.2.2 Add the following language after each use of "Architect":

and Owner

3.2.3 Delete the words "Subparagraphs 4.3.6 and 4.3.7" and replace with the following language:

the Contract Documents.

3.3.1 Add the following to the end of the Subparagraph:

The Contractor shall be solely responsible for all locations, dimensions and levels, and no plea as to instructions or orders received from any source, other than the information contained in plot, drawings and specifications or in written orders of the Architect shall justify departure from the dimensions and levels required by the drawings. He shall take his own measurements at the site, verifying same with the drawings and at the building, and will be held responsible for the proper fit of completed work in position.

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3.3.2 Add the following sentences to the end of the Subparagraph:

It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.4 Add the following Paragraph 3.3.4:

Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

3.4.4 Add this new Subparagraph:

Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

3.4.5 Add this new Subparagraph:

After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified only in writing.

3.4.6 Add this new Subparagraph:

By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

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.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.4.7 Add this new Subparagraph:

The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

3.5.1 Add the sentence at the end of the Subparagraph:

The warranties set out in this paragraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under applicable law.

3.5.2 Add this new Subparagraph:

The warranty of Contractor provided in Subparagraph 3.5.1 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall use its good faith efforts to include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

3.7.5 Add this new Subparagraph:

The Contractor shall be responsible for timely notification to, and coordination with, all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Owner at once when the Owner's participation is required. Connections for utilities required for the Work are the responsibility of the Contractor.

3.8.4 Add this new Subparagraph:

Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner from time to time upon request. Owner shall be responsible for costs incurred in excess of allowance amounts only to the extent approved by Owner.

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3.9.1 Add the following to the end of the Subparagraph:

Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by Owner who shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner determines that any employee of Contractor or of its Subcontractors is careless or not qualified to perform the Work assigned to him or otherwise in Owner's sole judgment is not appropriate for the Project, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly remove such employee from the Work and replace such employee. At all times while procurement activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of Owner. Similarly, at all times during the construction Work and the start-up and commissioning phases of the Work at the site, Contractor shall appoint a resident individual who shall be vested with the same authority and shall have the same responsibilities to Owner as the person described above. All of Contractor's and Subcontractors' personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall remove from the Work any person who fails to comply with such rules and instructions in any material respect.

3.12.8 Add the following language:

Construction Manager shall submit complete and accurate submittals at the first submission. If the submittal is returned not approved, only one (1) additional submission will be reviewed at Owner's cost. Any additional submissions will be reviewed at the cost of Construction Manager. Incomplete submittals or submittals containing excessive errors will be returned unchecked and any delay caused thereby will be the responsibility of Construction Manager.

3.12.10 Add the following language to the end of the Subparagraph:

provided, however, Contractor shall comply with the requirements of Subparagraphs 3.2.1 and 3.2.2.

3.12.11 Add this new Subparagraph:

Contractor shall assemble for approval by Owner one (1) complete copy in loose leaf binders of all operating and maintenance data for all equipment installed as a part of the Work, which binders must be delivered to Owner on or before Substantial Completion of the Work.

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3.15.3 Add this new Subparagraph:

The Contractor shall be responsible for protection of the Work, including damaged or broken glass, and at completion of the Work shall replace damaged Work. The Contractor shall perform the following final cleaning at completion of the Work:

- .1 Remove all temporary protections;
- .2 Remove marks, stains, fingerprints and other soil or dirt from all surfaces and other work;
- .3 Remove spots, mortar, plaster, soil and paint from ceramic tile, marble and other finish materials from all surfaces and other work;
- .4 Clean fixtures, cabinetwork and equipment, removing stains, paint, dirt, and leave in an undamaged and new condition; and
- .5 Clean all surfaces and other work in accordance with recommendations of the manufacturer.

3.17.1 Add the following language after "Architect" in the last line:

and Owner

3.18.1 Add the following at the end of the Subparagraph:

Contractor's indemnification obligation under this Subparagraph 3.18.1 shall, but not by way of limitation, specifically include all claims and judgments which may be made against the indemnified parties under OSHA, similar laws of the state or other governmental body having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or any Contractor's subcontractor's method of executing the Work. The indemnification obligation of Contractor under this Subparagraph 3.18.1 also shall include damage wrongfully caused by Contractor to the Work or property of Owner by such parties or to any adjacent properties, which Contractor shall promptly remedy any damage wrongfully caused by Contractor to a separate contractor or property of any separate contractor, which Contractor shall promptly attempt to settle, subject, however, to the waiver of subrogation provision contained in Subparagraph 11.1.4 hereof.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.2.3 Add the following sentences:

In no event shall Owner or its representatives have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, since these are solely Contractor's responsibility except as provided in Subparagraph 3.3.1. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

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4.2.4.1 Add this new Subparagraph:

Copies of all communications delivered by one party to the Architect shall be simultaneously delivered to the other party. Upon request of Owner, Contractor will also furnish Owner with copies of any other items delivered to the Architect.

4.2.6 Add the following language after "Architect" in line 1:

and Owner

Add the following language after each other use of "Architect";

or Owner

4.2.11 Delete the first section, and substitute the following:

If requested to do so by the Owner, the Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

4.2.12 Delete the last sentence of the Subparagraph as follows:

When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 Delete the Subparagraph in its entirety and in its place insert the following:

The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

4.2.14 Add this new Subparagraph:

Notwithstanding any other provision of this Agreement to the contrary, the Architect shall have no authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or the Contract Time. In the event any such deviation is sought, prior written approval from Owner must be obtained.

4.3.1 Delete the words in the first sentence "one of the parties" and in its place insert "the Contractor". Delete the last line of the subparagraph "party making the Claim" and in its place insert the word "Contractor".

4.3.6 Delete this entire subparagraph.

4.3.7.2 Add to the end of this Subparagraph the following:

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Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration normal seasonal weather conditions number of precipitation days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days indicated.

4.4 Delete entire Paragraph.

4.5.1 Delete the words, "arbitration or".

4.5.2 Delete the Subparagraph in its entirety and in its place insert the following:

The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. Request for mediation shall be filed in writing with the other party to this Contract.

4.6 Delete entire Paragraph.

ARTICLE 5: SUBCONTRACTORS

5.1.3 Add this new Subparagraph:

Contractor shall include the following provision in all of its subcontracts and purchase orders: "This Contract is for Owner's benefit, its successors and assigns who, as well as Contractor, may directly enforce all rights and warranties, express or implied herein, but Subcontractors shall have recourse only against Contractor and not against Owner." Owner may rely solely upon Contractor for enforcement of all Subcontracts. To effect such purpose, Contractor conditionally assigns to Owner all right to bring any actions against Subcontractors and material vendors without waiver by Owner of his right against Contractor because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; provided, however, Contractor shall have the sole right to bring actions against the Subcontractors unless Contractor has defaulted hereunder (and such default remains uncured) or Owner has terminated the Contract as a result of such default, whereupon Owner shall have such right.

5.2.1 Delete entire Subparagraph and replace it with the following:

At least five (5) days before entering into any Subcontracts, the Contractor shall furnish in writing to the Owner the name of the person or entities proposed for any Subcontracts.

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5.2.5 Add this new Subparagraph:

The Contractor shall not subcontract the work as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. Contractor shall be fully responsible for the performance of its Subcontractors, including those selected or approved by the Owner.

5.3.1 Insert the following word between the words "appropriate" and "agreement" and delete the words "written where legally required for validity":

written

5.4.3 Add this new Subparagraph:

Each Subcontract shall specifically provide that Owner shall only be responsible to the Subcontractor for those obligations of Contractor that accrue subsequent to Owner's exercise of any rights under the conditional assignment.

6.3.1 Delete the words "the Architect will."

7.2.3 Add this new Subparagraph:

Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.3.3 Delete entire Subparagraph and replace it with the following:

If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on the Owner's reasonable estimate of the net increase in cost and overhead attributable to the change in the Work.

7.3.4 Add the following language after "Architect":

and Owner

7.3.6 Delete the first sentence and replace with the following:

If the Contractor does not object in writing to the Owner and the Architect within ten (10) calendar days after the receipt of the Construction Change Directive, such Construction Change Directive shall be deemed accepted by the Contractor and shall

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be effective and recorded as a Change Order. If the Contractor disagrees with the method for adjustment in the Contract Sum and timely and properly objects, the method and the adjustment shall be determined by the parties on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. Any change order based on drawing modification shall only be for the net differences between additions and deductions in scope made in the later issued drawings.

Delete the words "and profit" in the fifth line of the paragraph and add the following to the end of the Subparagraph:

Costs for purposes of this Subparagraph 7.3.6 shall be limited to actual costs and shall not include any item which could be deemed to be general conditions costs or overhead, such as, but not limited to, the cost of Contractor's and Subcontractor's supervisory personnel assigned to the Work and field office and related expenses, except as specifically permitted in the Agreement. Additionally, the costs referred to in Subparagraphs 7.3.6.1-7.3.6.5 shall be reasonable costs.

ARTICLE 8: TIME

8.1.5 & Add these new Subparagraph:

8.1.6

8.1.5 Claims for extension of time shall be stated in whole or half calendar days.

8.1.6 The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only if, in the opinion of the Architect, climatological conditions that impede the progress of construction significantly exceed average conditions for the local area. A guide for average climatological conditions will be the bulletin "Local Climatological Data," published by the Department of Commerce. No request for an extension of time due to weather conditions will be considered unless accompanied by Weather Bureau documentary evidence showing by comparison that such weather is abnormal to any of the past five (5) years.

8.2.2 Delete the remainder of the Subparagraph beginning at the words "to permit" in the next to the last line.

8.3.1 Add "the critical path" between the words "or" and "progress" on the first line, delete "or by labor disputes", delete "and arbitration" and substitute "or litigation", and add the following to the end of the Subparagraph:

If the performance of the Work is not, was not or would not have been delayed by any other cause for which Contractor is not entitled to an extension in the Contract Time under the Contract Documents. Contractor further acknowledges and agrees that

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adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused by Contractor and (2) adversely affects the critical path of the Work (it being understood that Contractor may be entitled to an adjustment in the Contract Time even when the Contractor is ahead of the Project schedule).

8.3.4. Add this new Subparagraph 8.3.4:

In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1.1 In this Subparagraph and throughout the General Conditions, delete the phrase "Contract Sum" and substitute the phrase "Guaranteed Maximum Price." Delete the word "total" and substitute the word "maximum."

9.2.1 Delete the Subparagraph in its entirety and in its place insert the following:

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Owner a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Owner; unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

9.3.1 Add the following language after "Architect":

and Owner

Add the following to the end of the Subparagraph:

The Contractor shall submit Applications for Payment in triplicate, using AIA Document G702 and G703 supported by affidavits that it has paid all sums due to the Subcontractors and suppliers from all prior Applications for Payment and other such documentation as is required by the Contract Documents. All Applications for Payment (and the required supporting documentation) shall be submitted to the Owner and the Architect.

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9.3.1.3 & Add these new Subparagraphs:

9.3.1.4

9.3.1.3 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

9.3.1.4 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

9.3.3 In the second sentence delete the phrase "to the best of the Contractor's knowledge, information and belief,"

9.4.3 & Add these new Subparagraphs:

9.4.4

9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if in Owner's opinion legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Paragraph 9.5.1. If the Owner declines to make payment upon a Certificate of Payment, the Owner shall promptly notify the Contractor of the reasons therefor.

Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

9.5.1 Add the following to Subparagraph 9.5.1:

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- .8 failure to submit written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.
- .9 if any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents.

9.5.3 Add this new Subparagraph:

If Contractor disputes any determination by Architect or Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Paragraph 4.3.

9.6.1 Add the following sentence at the end of the Subparagraph:

Notwithstanding the foregoing, Owner may withhold payment as provided in Paragraph 9.5.1. Further, if Contractor is not current in its obligations to a supplier, laborers and/or Subcontractors on the Project, Owner may (but is not obligated to) withhold a periodic or final payment in an amount reasonably necessary to cover the amount which is not current until the Owner receives reasonable proof from the Contractor that this situation does not exist.

9.6.6 Delete the phrase "Work not in accordance with the Contract Documents" and in its place insert "any Work"

9.7.1 Delete "or awarded by arbitration" in the first sentence and add the following phrase after "the amount certified by the Architect":

subject to Owner's right to withhold payment as set out in Subparagraph 9.6.1. above.

9.7.2 Add this new Subparagraph:

If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or hereafter due the Contractor from the Owner or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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9.8.1 Add the following:

In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations. The "punchlist" shall be completed within 30 consecutive calendar days or as agreed upon following the Substantial Completion Date ("Final Completion"). Notwithstanding the foregoing or anything to the contrary contained in the Contract Documents, Owner may refuse to make payment on any Certificate of Substantial Completion or any other Certificate of Payment by Architect for any default by Contractor under the Contract Documents (including but not limited to the reasons set out in Paragraph 9.5.1) and Owner shall not be deemed to be in default under the Contract Documents for its withholding such payment.

9.8.2 On the first line delete the phrase "or a portion thereof which the Owner agrees to accept separately,".

9.8.3 On the second line delete the words "or designed portion thereof".

9.8.3 Add the following language following "intended use":

The Architect shall furnish Contractor information on what items it believes are necessary to reach substantial completion, and

9.8.4 Add the following words after the initial "When":

the Architect and Owner agree that

9.8.4 On the first line delete the words "or designated portion thereof". On the second line from the bottom delete the words "or designated portion thereof".

9.8.5 Delete in the second sentence the phrase "and consent of surety, if any, " and the phrase "or designated portion thereof".

9.10.2 Add the following words after "Architect":

and Owner

9.10.2.1 Add the following Paragraph 9.10.2.1:

In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver all other items required by the Contract Documents relating to the final completion and closeout of the Project.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

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10.2.3 Add the following to the end of this Subparagraph:

The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and any improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

10.2.8 Add this new Subparagraph:

The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

10.2.9 Add this new Subparagraph:

The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

10.2.10 Add this new Subparagraph:

The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

10.2.11 Add this new Subparagraph:

The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

10.6.1 Add the following to the end of this Subparagraph:

provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or failure to fulfill a specific responsibility of the Contractor to the Owner set forth in the Contract

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Documents or the failure of the Contractor's personnel to supervise adequately the Work of the Subcontractors or suppliers.

ARTICLE 11: INSURANCE AND BONDS

Various Delete Subparagraphs 11.3.1, 11.3.2 and 11.3.3 and delete Paragraph 11.4 and its Subparagraphs, all in their entirety and replace with the following Paragraphs and Subparagraphs:

11.1.1.1 Add the following phrase to the end of the last sentence:

" , including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project."

11.1.1.2 Add the following phrase to the end of the last sentence:

"or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause".

Add the following text at the end of subparagraph 11.1.2 "Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.
7. Broad Form Property Damage including Completed Operations."

11.1.2 All of the insurance policies described in the Contractor's Certificate of Insurance or otherwise in this Agreement except workers' compensation insurance shall name Owner and its designated representatives, Owner, Owner's lender ("Lender"), Architect and Architect's engineers (collectively, the "Insureds") as additional insureds pursuant to a CG Form 2037 endorsement with no qualifications, and such policies shall be issued by a company or companies acceptable to Owner. Contractor shall immediately deliver to Insureds copies of certificates by the insurer evidencing

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Insureds' coverage thereunder together with a copy of the endorsement showing the Insureds as additional insureds on the policy. New certificates of insurance shall be provided to Owner prior to the current certificate(s) coverage termination date if prior to completion of the Work. All certificates of insurance shall specify: (i) Owner as a certificate holder with correct mailing address, (ii) insured's name, which must match that on the Agreement, (iii) companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company, (iv) producer of the certificates with correct address and phone listed, (v) certificate holder has been named as an additional insured as respects the general, auto and umbrella liability policies described herein, (vi) waivers of subrogation in favor of the Insured on workers' compensation, general, auto and umbrella liability policies and, (vii) the general, auto and umbrella liability policies carry the Insureds on a primary basis.

11.1.2 Add these new Subparagraphs 11.1.2.1 and 11.1.2.2

11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:

- (a) State: Statutory
- (b) Applicable Federal: Statutory
- (c) Employer's Liability: \$500,000 per Accident
\$500,000 Disease, Policy Limit
\$500,000 Disease, Each Employee

2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):

- (a) Bodily Injury: \$500,000 Each Occurrence
\$1,000,000 Aggregate
- (b) Property Damage: \$500,000 Each Occurrence
\$1,000,000 Aggregate
- (c) Products and Completed Operations to be maintained for two years after final payment: \$500,000 Aggregate

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- (d) Property Damage Liability Insurance shall provide X, C and U coverage.
- (e) Broad Form Property Damage Coverage shall include Completed Operations.
- (f) Coverage to be extended to include the interests of the Architect and his consultants.

3. Contractual Liability:

- (a) Bodily Injury: \$500,000 Each Occurrence
 \$500,000 Aggregate
- (b) Property Damage: \$250,000 Each Occurrence
 \$500,000 Aggregate

4. Personal Injury, with Employment Exclusion deleted:

- (a) Coverage: \$500,000 Each Person Aggregate
 \$500,000 General Aggregate

5. Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Bodily Injury: \$500,000 Each Person
 \$1,000,000 Each Occurrence
- (b) Property Damage: \$250,000 Each Occurrence

6. Umbrella Excess Liability:

- (a) Over Primary Insurance: 1,000,000 Each Occurrence

- 7. Occurrence Policy: \$1,000,000 Each Occurrence
 (applicable for asbestos related projects
 only).

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2

11.1.2.2 Contractor shall not commence work at the site under this Contract until he obtained all required insurance and submitted appropriate certifications.

11.1.3 Add the following sentence after the last sentence of the Subparagraph 11.1.3:

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Add the following sentence after the last sentence of the subparagraph 11.1.3 "If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable."

11.1.4, 11.1.5 & 11.1.6 Add the following new Subparagraphs:

11.1.4 Each policy of insurance obtained by Contractor pursuant to the Contract Documents shall provide, by endorsement or otherwise (i) that such policy shall not be cancelled, endorsed, altered or reissued to effect a change in coverage required hereunder for any reason or to any extent whatsoever unless the insurer shall have first given Owner and Lender at least thirty (30) days prior written notice thereof and (ii) that Owner may, but shall not be obligated to, make premium payments to prevent the cancellation, endorsement, alteration or reissuance of such policy and such payments shall be accepted by the insurer to prevent same. Such policies shall provide, by endorsement or otherwise, that Contractor shall be solely responsible for the payment of all premiums under the policies, and that Owner and the other Indemnified Parties shall have no obligation for the payment thereof, notwithstanding that Owner and the other Indemnified Parties are named as additional insureds under the policy. Any insured property loss or claim of loss shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute, provided, however, the timing of the lawsuit shall not be governed by the Claims provision set out herein. Contractor shall not be responsible for any loss within the deductible area of the policy unless caused by Contractor's intentional misconduct. If Owner is damaged by the failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all costs properly attributable thereto. Contractor shall obtain and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no person or entity other than Owner has an insurable interest in the property required by this Paragraph to be covered, whichever is earlier.

11.1.5 Notwithstanding anything to the contrary herein contained, in the event that either Owner, Lender or Contractor incurs a loss by fire or other casualty, which fire or other casualty shall have been caused in whole or in part by the negligence or acts or

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omissions of the other party or the other party's agents, contractors, employees or servants, then, to the extent that the party incurring such loss is compensated by insurance coverage obtained (or required to be obtained) pursuant to the Contract Documents or any other insurance of Owner, Lender or Contractor applicable to the Project, that party hereby waives and releases any claim that it might have against the other party and the other party's agents, contractors, servants and employees; and no insurance company or other party shall have any rights against either Owner, Lender or Contractor by reason of any fire or casualty damage, either by subrogation, assignment or otherwise. This release shall apply to all claims caused by the sole, joint or concurrent negligence of the releasing party. Owner shall cause the Lender to agree to this waiver of subrogation provision in its agreement with the Lender relating to the Work.

11.1.6 In the event of any failure by Contractor to comply with the insurance requirements, Owner may, on ten (10) days written notice to Contractor, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so and if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

11.2.1 Delete the Subparagraph in its entirety:

11.4.1 So long as any of the Work remains to be completed, Contractor shall carry and maintain in full force and effect Builder's Risk Insurance, which shall be provided on an "all risk" completed value non-reporting form with a policy limit equal to one hundred percent (100%) of the insurable replacement cost of the Work (excluding land value), and shall cover fire, explosion, tornado, flood/surface water, (flood coverage is required only if the Project is located within an insurable flood zone), theft and other hazards, and shall provide coverage for materials and equipment stored away from the jobsite for use in Project construction, including coverage for said property in transit to the jobsite. Coverage will not include any tools or clothing of workmen or of any tools, equipment, protective fencing, scaffolding, temporary structures, forms and equipment, or other property owned, rented, or used by Contractor, any Subcontractors or Sub-Subcontractors and used in the performance of the Work, unless the value of such items is included in the Cost of the Work and such items are specifically identified in the Contract Documents. Owner shall not be liable or responsible for any loss or damage whatever to the items excluded in this paragraph and Contractor shall indemnify Owner and hold Owner harmless from any claims or causes of action brought by any persons or parties as a result of loss or damage to such excluded items. In the event that it is necessary to operate permanently installed equipment on anything other than a testing basis, or in the event it is necessary for owner to occupy a part or the entirety of the Work, the Builder's Risk Insurance policy must be endorsed to permit same. Contractor must give Owner at least ten (10) days prior written notice concerning anticipated testing of equipment. The Builder's Risk premium is not included in the current budget for the Project.

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11.4.1.1 After the last sentence of the Subparagraph, insert the following:

"The all risk policy shall be written using standard ISO forms incorporating a general change endorsement which grants permission for the project to be occupied and used with the insurance remaining in full force and effect until such time as the project has been accepted by the Owner. It shall include coverage for resultant damage from defective workmanship, materials and design, no coinsurance clause, coverage for site preparation, coverage for temporary structures, cribbing or falsework built on the construction site, and coverage for fences, scaffolding, construction forms and signs while at the construction site."

Delete subparagraphs 11.4.1.2, 11.4.1.3, and 11.4.1.5 in their entirety.

11.4.2 On the first line delete the word "Owner" and in its place insert "Contractor".

Delete subparagraphs 11.4.3 and 11.4.4 in their entirety.

11.4.6 On the first line delete the word "Owner" and in its place insert "Contractor" and delete the word "Contractor" and insert in its place "Owner". On the last sentence delete the word "Contractor" and in its place insert "Owner". The original all risk insurance policy certificate shall be delivered to and left in the safekeeping of Owner, a certificate or copy being retained by the Contractor. All insurance provided under this section shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the project is fully accepted by the Owner."

11.4.9 Delete the subparagraph in its entirety.

11.4.10 On the first line delete the remainder of the subparagraph starting with ", unless one of the parties in interest ..."

11.5.1 Delete the subparagraph in its entirety and in its place insert "The Contractor shall furnish a Performance Bond and a Payment Bond, if required by the Owner, as set forth in the Agreement. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Works made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond. The amount of each bond shall be equal to 100 percent of the Contract Sum."

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Add these new Subparagraphs 11.5.1.1, 11.5.1.2, 11.5.1.3 and 11.5.1.4

- 11.5.1.1** The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
- 11.5.1.2** The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.
- 11.5.1.3** The Contractor shall provide each bond on the form provided in the Project Manual.
- 11.5.1.4** No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor; and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

- 12.1.1** Add the following language after each use of "Architect":
or Owner
- 12.1.2** Add the following language after each use of "Architect":
or Owner
- 12.2.1.1** Add the following language after "Architect" in line 1:
or Owner
- 12.2.2.1** Add the following to the end of the second to last sentence:
except when emergency repairs are necessary to prevent further damage to the Work or damages to the Owner.
- 12.2.2.3** Delete in its entirety and insert the following:

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A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of final completion as certified by the Architect under this Contract and shall be consistent with Paragraph 11.10 of the Agreement. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (a) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

12.2.6 Add this new Subparagraph:

Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.2.2 Delete entire Subparagraph and replace it with the following:

Contractor may not assign this Contract or any portion hereof except with the prior written consent to Owner; provided, however, that in any event, Contractor shall not be relieved or released from any of its obligations or responsibilities hereunder. Subject to the foregoing limitations, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13.6.1 Delete the remainder of the subparagraph starting on second line "such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located" and in its place insert "ten percent (10%) per annum".

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Add these new Paragraphs:

- 13.7 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.
- 13.8 This Contract is the joint product of the parties hereto. Each party hereto acknowledges and agrees that it enters into this Contract voluntarily, with advice of counsel, and that each party hereto and their respective counsel have had opportunity to revise and have revised the language of this Contract by negotiation and bargaining, at "arms length." Consequently, in the construction and/or enforcement of this Contract, or any of its terms, the participation of any party in the drafting of this Contract shall not be construed, in any way, against such party.
- 13.9 This Contract is for the sole benefit of the parties hereto, and is not intended to confer any right, nor is it intended to create any obligation with respect to any party that is not a signatory or party to this Contract.
- 13.10 Each signatory hereto represents that it has the authority to execute this Contract on behalf of the respective named party.
- 13.11 This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity.
- 13.12 If either party places the enforcement of this Agreement, or any part hereof, or the exercise of any remedy herein provided, in the hands of an attorney who institutes an action or proceeding upon the same (either by direct action or counterclaim), the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party shall be entitled to its attorneys' fees incurred in any post-judgment proceeding or action to collect or enforce the judgment. This provision is separate and several and shall survive the expiration or earlier termination of this Agreement or the merger of this Agreement into any judgment on such instrument.
- 13.13 **CRIMINAL BACKGROUND.** Intentionally deleted.

Add this new subparagraph 13.14

- 13.14 **WORKING TIME AND WORKING RESTRICTIONS**
- 13.14.1 **THE ENTIRE BUILDING IS TOBACCO-FREE AT ALL TIMES AND APPLIES TO ALL OCCUPANTS**
- 13.14.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the

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Work be accomplished after normal working hours or other than on normal working days.

- 13.14.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.
- 13.14.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.
- 13.14.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.
- 13.14.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1.4 Delete in its entirety Subparagraph 14.1.1.4.

14.1.2 Delete in its entirety Subparagraph 14.1.2.

14.1.3 On the first line delete reference to Subparagraph 14.1.2. On the second line delete the word "seven" and in its place insert "fourteen (14)". On the third line delete the remainder of the subparagraph starting with "and for proven loss with respect ..."

14.1.4 On the third line from the bottom, delete the word "seven" and in its place insert "fourteen (14)".

14.1.5 Add this new Subparagraph:

Any payment due to, or recovered by, Contractor under paragraphs 14.1.3 and 14.1.4 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

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- (a) the fair value (not Contractor's cost or profit) of the executed Work, or
- (b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

14.2.1.3 At the end of the subparagraph delete the word "or".

14.2.1.4 Add the word "or" at the end of this phrase.

14.2.1.5 Add these new Subparagraph:

14.2.1.6, .5 Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment

14.2.1.7 for the benefit of creditors;

14.2.1.8 .6 Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding;

.7 a receiver or trustee is appointed for all or a significant portion of the assets of Contractor; or

.8 Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project.

14.2.2 Delete the words "upon certification by the Architect that sufficient cause exists to justify such action" and delete the words "subject to any prior rights of the surety" and add the following:

After any termination of this Contract by Owner pursuant to this Subparagraph 14.2.2, Contractor shall not be entitled to any further payment except to the extent of any amount by which Work completed or installed by Contractor prior to such termination and not previously paid for by Owner exceeds the amount due by Contractor to Owner under this Paragraph 14.2.2 (including all damages which Owner would be entitled to recover at law from Contractor by reason of Contractor's breach, subject to the waiver of consequential damages set out herein), and even then only at such time as the Work is finally completed. It is expressly agreed that pursuit by Owner of any one or more of the remedies provided herein or otherwise available at law or in equity shall not constitute an election of remedies by Owner, nor shall forbearance by Owner to enforce one or more of the remedies provided herein upon an event of default by Contractor be deemed or construed to constitute a waiver of such default.

14.2.2.3 Delete the last sentence beginning with "Upon request of"

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14.2.4 Delete in the last sentence the phrase "the amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect."

14.2.5 Add this new Subparagraph:

It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract Documents and to the accompanying rights set forth above in Subparagraphs 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

14.3.2 Delete the phrase "Adjustment of the Contract Sum shall include profit."

14.4.1 Add the following to the end of the Subparagraph

upon giving the Contractor three (3) days' notice of its intention to do so.

14.4.3 Delete end of paragraph following the phrase "for Work executed" and in its place add "on same basis provided in Subparagraph 14.1.3."

Add the following Article 15

ARTICLE 15: ADDITIONAL CONDITIONS FOR LIQUIDATED DAMAGES

15.1 CONTRACTUAL PROVISIONS

15.1.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed."

15.1.2 Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the

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Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.

- 15.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated by the Bidder in this proposal, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.
- 15.1.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.
- 15.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:
- .1 To any performance, priority or allocated order duly issued by the Government.
 - .2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather.
 - .3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.
- 15.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.
- 15.1.7 The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project on or before the time indicated by the bidder's proposal. The Contractor further agrees to pay, as liquidated damages, the sum given below for each

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consecutive calendar day thereafter as hereinafter provided in Article 15 of the
"Supplementary Conditions of the Contract for Construction."

Agreed damages per day

\$500.00
(amount to be determined)

Calendar days Substantial
Completion is delayed

beyond midnight of
Contract Completion Date

- 15.1.8 Contractor and Owner agree that should Contractor further fail to achieve Final Completion of the Contract more than 15 calendar days after the Date established for Substantial Completion, Owner shall continue to be damaged to a lesser degree, by such delay. Contractor and Owner have estimated and agreed upon the amount of damages for each calendar day Final Completion is delayed beyond 15 calendar days after the date of Substantial Completion shall be as follows:

Agreed damages per day

\$ _____
(amount to be determined)

Calendar days Final
Completion is delayed after
achieving Substantial Completion

beyond midnight of Date
15 calendar days after
Substantial Completion

- 15.1.9 Contractor agrees to pay to Owner upon the demand the total damages due for any such delay (calculated using the per diem damage figure described) as liquidated damages and not as a penalty. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.